

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

DOLLY SMOLNIK, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF RONALD SMOLNIK

PLAINTIFFS

v.

No. 04-CV-401

THOMAS VAN DYKE AND SUE VAN DYKE,
INDIVIDUALLY AND D/B/A RANCH MOTEL
AND STORAGE

DEFENDANTS

ORDER

On the 24th day of October 2006, this matter came on for trial to a duly selected jury consisting of twelve members, the Honorable Robert T. Dawson presiding. On October 26, 2006, the case was submitted to the jury on interrogatories and a verdict was reached in favor of the Defendants.

Specifically, the jury found that the Smolniks were not "employees engaged in commerce" and that the Defendants did not fail to pay the Smolniks the minimum wage and/or overtime pay required by the Fair Labor Standards Act (FLSA).

In order to be protected by the FLSA an individual must be an employee as opposed to an independent contractor. Whether an individual is an employee with the meaning of the FLSA is a question of law. See *Jarrett v. ERC Properties, Inc.*, 211 F.3d 1078 (8th Cir. 2000). In this case, the jury determined Plaintiffs were not employees within the meaning of the FLSA. The Court adopts that finding and concludes Plaintiffs were independent contractors and, therefore, not entitled to the

protections offered by the FLSA.

IT IS ORDERED AND ADJUDGED in accordance with the jury verdict, as well as this Court's determination, that the Plaintiffs take nothing on their complaint and the matter is DISMISSED WITH PREJUDICE. All parties are to bear their respective costs and attorney's fees.

IT IS SO ORDERED this 20th day of November, 2006.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge